

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14117, of Ray T. Sullivan and Mary M. Cairns, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a non-conforming use from a "handweaving studio, retail sales handweaving equipment and products, also retail sale of small gifts and greeting cards," first floor, to retail sales of fabrics, home furnishings and small gifts, first floor, in an R-3 District at premises 1301 - 35th Street, N.W., (Square 1228, Lot 805).

HEARING DATE: June 13, 1984

DECISION DATE: July 11, 1984

FINDINGS OF FACT:

1. The subject site is located on the northeast corner of the intersection of 35th and N Streets, N.W. The site is in an R-3 District and is known as premises 1301 35th Street, N.W.

2. The subject site is rectangular in shape and is improved by an attached two-story, mixed use building. Previously used as a "handweaving studio, retail sales of handweaving equipment and products, also retail sales of small gifts and greeting cards," the ground floor and basement of the premises occupy approximately 1,800 square feet and are currently vacant. The second floor is used as an apartment which is currently occupied by the operator of the previous nonconforming use. There is a large picture window on the west and south ground level side of the building in addition to two sash windows on the south ground level side of the building. The front door faces 35th Street on the west side of the building.

3. The subject premises is located in an R-3 District near the campus of Georgetown University. Georgetown University occupies nearly all of the buildings located in Square 1222 which is located diagonally across the intersection of 35th and N Streets, N.W., from the subject premises. The University also occupies over fifty percent of the buildings located in Square 1227 which is located directly across 35th Street from the subject premises. Also directly across 35th Street to the west in Square 1227, the subject premises faces two nonconforming commercial uses: a decorator studio, owned by the applicant, and a grocery store. A shoe repair shop, a dry cleaner, a barber shop and

an antique store are located to the north on the same block as the subject premises. Single and multi-family residential uses constitute the remainder of the neighborhood.

4. The subject building contains one residential unit on the second floor. The ground floor consists of one large room and two smaller rooms, and the basement consists of one large room and one small bathroom.

5. The lessee operator of the subject shop, Anthony P. Browne, Inc., presently operates a retail fabric, wall covering and small household furnishings studio on the first floor of a building at 1261 35th Street, N.W., on the southeast corner of 35th and N Streets, across N Street, from the subject premises. The lessee also operates an interior design studio for the retail sales of fabric and household accessories in a building at 1300 35th Street, N.W., on the northwest corner of 35th and N Streets, across 35th Street from the subject premises.

6. A large part of the lessee's business consists of the sales of fabrics for draperies, curtains and furniture fabrics and the sale of small household accessories such as lamps, bowls and ashtrays. Since opening at the two present locations the lessee's business has grown steadily. The lessee desires to expand into a new line of more reasonably priced fabrics and requires additional space to display various items of furniture that are used to model sample fabrics. The first floor of the subject premises will be used as a showroom for the display and sale of fabrics, wall coverings and household accessories and gifts. The basement of the subject premises will be used as storage space for inventory and office use.

7. Section 7106 of that Zoning Regulations provides that a nonconforming use may be changed to a use which is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

- A. The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with the Regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.
- B. The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

C. In Residential Districts, the proposed use shall be either a dwelling, flat, apartment house or a neighborhood facility.

8. The proposed hours of operation are from 10:00 A.M. to 6:00 P.M. Monday through Friday and 11:00 A.M. to 5:00 P.M. on Saturday.

9. There will be no manufacturing, dry cleaning, tailoring or anything of that nature on the premises. The business activities will be limited strictly to retail sales of fabrics and small accessories.

10. The United Parcel Service makes three deliveries per week, usually consisting of bolts of cloth. There will be one bulk delivery a month by panel truck.

11. The lessee testified that not only would there be no deleterious effects from the purpose use of the subject premises, but that since the opening of his businesses in the neighborhood, he has done much to improve the appearance of the entire intersection. There are many people in the neighborhood who want him specifically to have the subject premises because of the appearance of his other stores and their minimal effect on the neighborhood.

12. There will be no major alterations to the premises, with the exception of a small discrete sign and the erection of a small awning over the door, similar to the awnings on the lessee's other two establishments.

13. Seventy-five percent of the customers come from the Georgetown neighborhood, which the lessee defined as being included within Prospect Street, Reservoir Road and Rock Creek Park. No more than six customers per day visit the shops, many of whom walk there. The lessee calls on many of his customers in their own homes, including many customers out of town.

14. The lessee does not advertise widely. He had placed one ad in the past year, other than to promote charitable functions. New clients are recommended by prior clients.

15. One neighbor testified in support of the application. She testified that the lessee's shops have a minimal impact on the neighborhood and that the lessee has been a good neighbor. She testified that the lessee has improved the intersection of 35th and N Streets, N.W. transforming it into a pleasant, attractive area. She testified that the deliveries are infrequent enough that she had not noticed their frequency. The witness was confident that the lessee's proposed use would have no deleterious effects on the

neighborhood and that she knew that other people in the neighborhood welcomed the new store as she did.

16. The prior and the purposed use are first permitted in the C-1 District.

17. The Office of Planning, by report dated June 6, 1984, recommended approval of the application. The Office of Planning noted that the proposed retail use would not have an adverse impact on the neighborhood. The lessee's two commercial establishments existing nearby have not appeared to create any negative impact on the area. The Office of Planning noted that the proposed use would be a neighborhood facility since at least sixty-five percent of the customers would come from the area and arrive on foot. The Board concurs in the recommendation of the Office of Planning.

18. There were letters of record in favor and in opposition to the application. Those on favor suggested that the lessee was a good neighbor and that his shops improved the appearance of the neighborhood. Those opposed suggested that a business complex was being introduced to the area under the guise of individual special exceptions.

19. Advisory Neighborhood Commission 2E, by report dated May 2, 1984, filed a recommendation on the application. The Advisory Neighborhood Commission testified through its representative, who also spoke on behalf on the Citizens Association of Georgetown, in opposition to the application. The opponents were concerned about the proliferation of the applicant's nonconforming uses, which, in the opinion of the opponents, should be strictly controlled. The opponents further expressed concern that the proposed use did not meet the parking requirements of Section 7202 of the Zoning Regulations. The opponents argued that Zoning Administrator had ruled in previous cases that where stores were located along side of each other, even if they did not have connecting doors, they would be treated as one use. The opponents argued that although the applicant's three shops are not connecting they should be treated as one use, thus pushing the total floor area devoted to this use over the 2,000 square foot exclusion for retail and service establishments. The opponents recommended that, if the Board granted the application, the Order be conditioned on approval for a period of two years, only, to coincide with review of the applicant's existing uses in 1986, provision of off-street parking in accordance with Section 7202 of the Zoning Regulations and other conditions identical to those imposed under BZA Order No. 13863, dated April 11, 1983, for the second store.

20. The Board is required by statute to give great weight to the issues and concerns of the Advisory

Neighborhood Commission which are reduced to a written recommendation. In addressing the concerns of the Advisory Neighborhood Commission and other opposition, the Board finds that the lessee under the Zoning Regulations is not required to provide any parking spaces. All three shops are on separate lots and are separate structures. None contains over 2,000 square feet. All three stores will be operating under individual certificates of occupancy. The Board reviewed all three on their individual merits and not as one commercial entity. As conditioned below, the Board concurs with the other concerns of the Advisory Neighborhood Commission. All three shops will have a common termination date, so that the Board may review the full impact on the immediate neighborhood.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception to change a nonconforming use, the granting of which requires a showing through substantial evidence that the proposed nonconforming use is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right and that the proposed use will not adversely affect the present character or future development of the surrounding area. The Board further must find that the proposed use will not create any deleterious external effects and that the proposed use will be a neighborhood facility.

The Board concludes that the applicant has met this burden of proof in that the applicant proposes to use the first floor and basement of the subject premises to sell fabrics, home furnishings and small gifts which is first permitted as a matter of right in the C-1 District. The previous use is also first permitted as a matter of right in the C-1 District. The Board further concludes that the proposed use will not adversely affect the present character or further development of the surrounding area and that it will not create any deleterious external effects, including but not limited to noise, traffic, parking and locating considerations, illumination, vibration, odor, and design and siting effects. The lessee's other shops have been in existence for several years without any negative impact to the area.

The Board further concludes that the proposed use will be a neighborhood facility. The testimony evidences that a minimum of sixty-five percent of the applicant's customers are drawn from the Georgetown neighborhood and that the shop will cater to the needs of the neighborhood. Furthermore, customers are drawn to the lessee's business by word-of-mouth, with very little advertising. The Board further concludes that the subject premises does not adjoin the

applicant's other nonconforming uses and contains 1,800 square feet, less than the 2,000 square foot minimum for which parking required for retail/service establishments as set forth in Section 7202 of the Zoning Regulations.


The Board concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is hereby ORDERED that the application is GRANTED subject to the following CONDITIONS:

1. Approval shall be for a period terminating on April 11, 1986.
2. Operation of the facility shall be limited to the lessee, Anthony P. Browne, Inc.
3. The hours of operation shall not exceed from 10:00 A.M. to 6:00 P.M. Monday thru Saturday.
4. There shall be a maximum of two employees at the subject facility at all times.
5. There shall be no manufacturing or assembling of materials on the subject premises.
6. There shall be no neon, fluorescent or gas tube lighting on the building facade.
7. The sign advertising the subject premises shall be similar in appearance and character to that of the existing sign located on the facade of 1263 35th Street, N.W., subject to review and approval by the Historic Preservation Review Board.
8. The storage of flammable materials, if any, on the site shall be in accordance with all applicable municipal regulations.

VOTE: 3-0 (Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to grant, Charles R. Norris and Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

AUG 17 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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